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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

NO. 40

RECONSTRUCTION FINANCE CORPORATION, SUCCESSOR TO DEFENSE PLANT CORPORATION, Appellant,

v.

COUNTY OF BEAVER, PENNSYLVANIA.

Appeal from the Supreme Court of the Commonwealth of Pennsylvania.

BRIEF FOR COUNTY OF BEAVER, PENNSYLVANIA, APPELLEE.

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Appeal from the Supreme Court of the Commonwealth of Pennsylvania.

BRIEF FOR COUNTY OF BEAVER, PENNSYLVANIA, APPELLEE.

JURISDICTION.

Appellant appears to misunderstand the basis of appellee's Statement Opposing Jurisdiction and Motion to Dismiss or Affirm. Appellee does *not* contend that Section 237(a) of the Judicial Code, as amended, is inapplicable to this appeal. It *does contend* that the appealed decision deals with no question pertaining to the ordinary immunity from local taxation enjoyed by appellant by implication from the Constitution of the United States, that no decision of any such question was or is necessary to a decision of this case, and that,

consequently, appellant's attempt to obtain a review of the appealed decision as one in favor of the validity of the State statute as concerns *any repugnancy to the Constitution* is *frivolous*. Appellee's point *in this respect* is that Congress legislated a *waiver* of the implied Constitutional immunity, and that the only question dealt with below, or necessary to be dealt with in decision of this case, concerns the *scope of the Congressional waiver*. The only Federal question involved, therefore, is whether the State statute, as construed and applied, is repugnant to the *Act of Congress defining the waiver*. Upon the ground that the intention of Congress is free from any reasonable judicial doubt as to the *scope of the waiver*, appellee contends that this Federal question is not of the *substantial* character required by Rule 12, par. 1, of this Court. In consequence of all of the foregoing, appellee's Motion to Dismiss or Affirm is based upon the ground that *no substantial Federal question* is presented by the record, and appellee presses for a favorable disposition of its motion.

COUNTER-STATEMENT OF THE CASE.

In 1942 Defense Plant Corporation was a Government-owned corporate agency or instrumentality of the United States, created or organized by the Reconstruction Finance Corporation under the authority of 15 U. S. C., §606b. By Joint Resolution of the Congress, approved June 30, 1945, and effective July 1, 1945, (Chapter 215, Public Law 109, 79th Congress), Defense Plant Corporation was dissolved and all of its functions, powers, duties, etc., were transferred to Reconstruction Finance Corporation with a direction that the latter

corporation "shall assume and be subject to all liabilities, whether arising out of contract or otherwise" of the dissolved corporation. Defense Plant Corporation was the original party appellant in this appeal. By appropriate motion granted by this Court pursuant to said Joint Resolution, Reconstruction Finance Corporation has been substituted as party appellant in succession to Defense Plant Corporation. For convenience, the word "appellant", as used hereinbefore and hereinafter, refers indiscriminately to either and both of said corporations.

The decision of the Court below is one in affirmance of an assessment of a mill or manufactory located in appellee County and owned by appellant. The assessment was made in 1942 by the proper authority under the provisions of a Pennsylvania statute (section 201 of the General County Assessment Law of May 22, 1933, P. L. 853, as amended; 72 Purdon's Pa. Stat. (5020-201) designating "mills and manufactories of all kinds" as *real estate* subject to taxation for local purposes and directing their assessment for application thereto of "the annual rate" of local tax levies.

Under the century old decisional law of Pennsylvania, a mill or manufactory is *an integral unit of real property* comprised of land, buildings, and all machinery upon the premises essential to its operation as a mill or manufactory. In its Statement as to jurisdiction, appellant states (p. 6) that it "has at no time sought to contest this construction by Pennsylvania courts of the Pennsylvania tax law". The fact is that the aforesaid settled decisional law of Pennsylvania not only applies to its tax law but also is a general rule of property law in Pennsylvania (R. 65-69). Pursuant to the

Pennsylvania statute and said decisional law, appellant's machinery upon the premises of its manufactory and essential to its existence and operation as such was included in the real estate assessment of its manufactory.

When the assessment of appellant's mill or manufactory was thus made, there was in force and effect the Act of Congress known as the Reconstruction Finance Corporation Act of January 22, 1932, 47 Stat. 9, as well as the amendment of Section 10 thereof effected by Section 3 of the Act of June 10, 1941, 55 Stat. 248 (15 U. S. C. §610). The relevant language of said Act as so amended is as follows:

> "The [Reconstruction Finance] corporation, including its franchise, its capital, reserves, and surplus, and its income shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that any real property of the corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. The exemptions provided for in the preceding sentence with respect to taxation * * * shall be construed to be applicable * * * with respect to the Defense Plant Corporation * * *. Such exemptions shall also be construed to be applicable to the loans made, and personal property owned, by the Reconstruction Finance Corporation or by [the Defense Plant Corporation] * * *, but such exemptions shall not be construed to be applicable in any State to any buildings which

are considered by the laws of such State to be personal property for taxation purposes.".

The court of first instance (the Court of Common Pleas of Beaver County, Pa.) said in its opinion (R. 69): "The vital question in connection with the present case is what is intended by the Act of Congress by its reference to real property." At the beginning of its opinion, the Court below said (R. 83): "The question is, what did Congress mean by the term 'real property' in the Act waiving immunity from taxation of certain property owned by government agencies." And again, the Court below said (R. 85): "What did Congress intend by the term 'real property' in the statute which was designed to waive immunity in aid of the revenues of local communities in which industrial establishments were engaged in manufacturing defense material?"

Throughout this litigation, appellant has contended that the machinery upon the premises of its manufactory is immune from local taxation under the intendment of Congress in the enactment of the statute above quoted and should, therefore, not have been included in the assessment. Despite the finding of the court of first instance (finding No. 13, R. 55) that said machinery was necessary and essential to the existence and operation of its manufactory, and to which it has never taken exception, appellant continues so to contend in this appeal. The Court below held (R. 88) that the machinery was properly included in the assessment as required by Pennsylvania law, and as intended by the Act of Congress permitting *"local taxation"* of *"any real property"* of appellant *"to the same extent according to its value as other real property is taxed"*.

The foregoing simple Counter-Statement of the Case is deemed necessary and advisable in order to blow away the chaff in appellant's Statement and to bring into proper relief the only question believed by us to be involved in the merits of this appeal.

COUNTER-STATEMENT OF QUESTIONS PRESENTED.

(1) Did Congress intend its permitted local taxation of "any real property" of Defense Plant Corporation to be governed by local law as to what constitutes such property for local tax purposes?

(2) Does the record in this appeal present a substantial Federal question?

SUMMARY OF ARGUMENT TO FOLLOW.

As to the merits. The decisive question is whether Congress intended its permitted local taxation of "any real property" owned by appellant to be governed by local law as to what constitutes such property for local tax purposes. We contend that it did so intend. The problem before Congress was a local one. The evil to be remedied was the normal immunity of such property from local taxation. The plain legislative purpose was to cure that evil. Due to the variety in state law definitions, the evil was not curable by any legislative definition for uniform application throughout the nation. The failure of Congress to define the term is significant *per se* of its realization of that fact. Had it intended a nation-

wide uniform application, Congress would and should have defined the term. The very language employed is determinative of the question. No decision upon prior Federal statutes employing the term "real property" casts any doubt upon the question. The legislative circumstances demonstrate an intention to subject appellant's real property to nondiscriminatory local taxation. Application of local law is necessary to prevent discrimination in favor of appellant. The preservation of immunity of personal property relates to personal property tax laws only. The portion of the Act dealing therewith emphasizes the legislative intent for state law application of the waiver as to real property taxation contained earlier in the same Act. This waiver of immunity is entitled to a liberal construction. Congress meant the full consequences of what it said. Decisions involving application of Federal revenue laws and other statutes solving national problems on a national scale prove, rather than disprove, the intention that local law is to govern the application of this Act. The inherent power of this Court to correct an inept characterization by a state court of the subject matter of a tax has no application to a determination of the question here. Congress created no Federal right in appellant to require this Act to be applied uniformly and without regard to State laws. Appellant itself concedes the decisive character of the question of intent for application of local law. The issue here pertains not to the prohibition against taxation of personal property but to the permission for taxation of real property. Taxation of appellant's plants as units of locally taxable real property imposes no unfair burden on the nation. By this Act, Congress has resolved whatever conflicts previously existed between appellant Governmental-instrumentality and the local industrial com-

munities in which its plants are located. Had the United States owned the entire plant involved in *U. S. v. County of Allegheny*, 322 U. S. 174, and had an Act similar to this Act been present in that case, the decision there would have been against the United States. Congress intended appellant's real property to be subjected to local taxation *exactly* as any other real property is taxed in the several States. And, as a *necessary corrolary* to that intention, Congress intended the words "any real property" to comprehend whatever is real property for local taxation purposes in the particular State where it is located. Appellant's plant was so taxed, and its appeal here is without merit.

As to the jurisdiction. The Federal question presented by the record is not a substantial one. There is complete unanimity of opinion upon it by both of the courts below. Appellant cites no case from any jurisdiction expressing any judicial doubt as to the legislative intent that local law is to govern the application of the Act of Congress here involved. That intention is crystal clear. Hence, the question is so free from judicial doubt as to deprive it of reviewability under Rule 12, par. 1, of this Court.

Conclusion. This appeal should be dismissed for want of substantiality in the Federal question presented. If not so dismissed, the appeal is without merit and the judgment below should be affirmed.

ARGUMENT.

I.

Congress intended its permitted local taxation of "any real property" of Defense Plant Corporation to be governed by local law as to what constitutes such property for local tax purposes.

(1) Appellant's argument is so formulated in context as to subordinate this question. However, in introducing its argument, appellant makes a vital concession concerning the question. In that introduction (see p. 17 of its Brief), appellant refers to "the question as to whether Congress intended state law to govern, and if not, what 'real property' was intended to mean", etc. By this *"if not"* clause, appellant obviously concedes the primary character of the question. But, disregarding its basic importance, appellant proceeds to indulge at great length in an argument dealing with the other question posed,—an argument which, of course, is a waste of effort if Congress intended state law to govern. Our argument on the merits of this appeal will deal solely with *this* question as the *decisive* one in the case.

(2) In *Jerome v. United States*, 318 U. S. 101, 104, this Court said:

> "At times it has been inferred from the nature of the problem with which Congress was dealing that the application of a federal statute should be dependent on state law. * * * But we must generally assume, in the absence of a plain indication

> to the contrary, that Congress when it enacts a statute is not making the application of the federal act dependent on state law. That assumption is based on the fact that the application of federal legislation is nationwide (*United States v. Pelzer*, 312 U. S. 399, 402) and at times on the fact that the federal program would be impaired if state law were to control. *Seaboard Air Line Ry. v. Horton*, 233 U. S. 492, 503."

It is our contention that the case at bar presents a clear instance of a "time" when it is to be "inferred from the nature of the problem with which Congress was dealing that the application of a federal statute should be dependent on state law". The Act here is not the type of act (*a Federal revenue law*) construed in *United States v. Pelzer*, in which, upon examination of the Senate and House committee reports, the Court found a general definition of the phrase there involved and came to the conclusion that the act there "plainly is not concerned with the varying local definitions of property interests". Nor is it the type of act construed in *Seaboard Air Line Ry. v. Horton*, in which the act (the Federal Employees' Liability Act) was "a general law for establishing and enforcing the responsibility of common carriers by railroad to their employees in interstate commerce", *a plain Federal field*. Nor is it the type of act involved in the *Jerome* case itself, as will be hereinafter fully demonstrated.

Upon thoughtful consideration, the conclusion is inescapable that any such "assumption" as is spoken of in the *Jerome* case can be derived only from the special *nature of the problem* with which Congress was dealing in the *particular legislation involved* and in which such

an "assumption" is logical in the circumstances. *All* federal legislation is for nation-wide application and, in a sense, establishes a nation-wide program. *But a nation-wide program does not necessarily contemplate a uniform application having no regard for state laws.* Whether it does so or not depends upon the nature of the particular problem which the program is designed to solve. The relevant inquiry goes primarily to the purpose of the curative program and the evil to be remedied by it. If the inquiry develops a logical basis for such an "assumption", it will of course arise. But not otherwise. We shall proceed with the necessary inquiry in demonstration of the lack of any basis for any such "assumption" as concerns the Act here involved.

(3) All property of a Government-owned corporation is wholly immune from local taxation by implication from the Constitution (*Clallam County v. United States*, 263 U. S. 341), unless such taxation is permitted by Congress under the powers delegated to it by Art. IV, Sec. 3, cl. 2, and Art. I, Sec. 8, cl. 18, of the Constitution. Thus, the *evil to be remedied* by the Act here involved was the normal immunity of appellant's property from local taxation. That was the *problem* before the Congress. It was engaged in a curative program to permit *local taxation* of "any real property" owned by appellant wheresoever it might be *located*. Such is the unquestionable *purpose* of the Act.

(4) The absence of any definition of what Congress intended *"any real property"* to mean is significant *per se*. Had it intended a definition for *uniform* application having no regard for state laws, Congress *could* and *would* have formulated such a definition.

Congress *knew* that there is no *federal general common law* (*Erie R. Co. v. Tompkins*, 304 U. S. 64, 68), and, hence, *no federal common law* definition of the words "real property" for *any* purpose, much less for a *tax* purpose. It *knew* that the laws of the 48 several states were historically rooted in different ideologies,—some in the common law of England, some in the canon law, some in the Napoleonic Code, some in the civil law, and some in curious combinations partly of one and partly of another of these various systems of law. It *knew*, therefore, that each of the several states had *its own laws*, statutory and decisional, defining "real property" for the purpose of the *"local taxation"* that Congress was engaged in permitting. It *knew* that there exists *the law of the conflict of laws*. It *knew* that, under *that law*, "Whether an interest in a tangible thing is classified as real or personal property is determined by the law of the State where the thing is": *Restatement, Conflict of Laws*, §208. It *knew* that "the question whether a thing is movable or immovable, or more properly, whether it is to be *treated* as if it were movable or immovable, is governed by the law of the situs": Professor Beale's *Treatise on the Conflict of Laws* (1935 Edition), Vol. 2, p. 934. It *knew* that, as a generally accepted rule, the federal courts (including *this court*) adopt the state law's determination as to what constitutes real property: *Clark v. Clark*, 178 U. S. 186; *Edward Hines Yellow Pine Trustees v. Martin*, 268 U. S. 458; *W. T. Waggoner Estate v. Wichita County*, 273 U. S. 113; and see *in particular* the cases cited by the Court below (R. 86): *viz.*, *U. S. ex rel T. V. A. v. Powelson*, 319 U. S. 266, 279; *U. S. v. Bechtold Co.*, 129 F. 2d 473 (C. C. A., 8th, 1942); *U. S. v. 19.86 Acres of Land*, 141 F. 2d 344 (C. C. A., 7th, 1944).

Furthermore, Congress *knew* the canons of statutory construction as laid down in this Court's decisions. It *knew*, for example, that when a statutory provision admits of more than one construction, that one will be adopted which best serves *to carry out the purposes* of the act: *Bernier v. Bernier*, 147 U. S. 242, 246; that a statute should be construed to *effectuate its evident purpose*: *Royal Indemnity Co. v. American Bond & Mtge. Co.*, 289 U. S. 165, 169; that all statutes must be construed *in the light of their purpose*: *Haggar Co. v. Helvering*, 308 U. S. 389, 394; and that the meaning of the words used in a statute is to be arrived at by a consideration not only of the *words themselves*, but by considering, as well, the *context, the purposes of the law*, and the *circumstances under which the words were employed*: *Puerto Rico v. Shell Co.*, 302 U. S. 253, 258, and cases there cited.

Congress *knew* that by the famous *Tompkins* case, *supra*, this Court had restored to its full intended effect the mandate of Section 34 of the Federal Judiciary Act (28 U. S. C. §275), which reads as follows (emphasis supplied):

> "The laws of the several states, *except where* the constitution, treaties, or *statutes* of the United States *otherwise require or provide*, shall be regarded as rules of decisions in trials at common law, in the courts of the United States, in cases where they apply."

Congress *knew* that it would be the *State courts* that would be called upon to apply the Act here involved and that no State court would presume to devise a definition of "real property" as a term of *federal* nomen-

clature. It *knew* that the assessment of "real property", appeals therefrom, the levying of the tax, and the procedure for enforcing its collection, are all administered under local laws and cannot be otherwise administered. It *knew* that no necessity exists, as in federal revenue statutes and other nationally administered laws, for any uniform application of *this* Act throughout the nation. It *knew* that any attempt at uniform application would destroy the very purpose of the Act to permit *local taxation* of such property as other similar property is taxed.

Presumed and bound by law to have known *all of the foregoing,* Congress *failed* to legislate into this Act a definition of the term "real property" used in the Act. We repeat that its failure so to do is affirmatively significant *per se* of its intention. To intend that the various laws of the several states were *not* to govern the application of the Act, it would have been *necessary* for Congress to have defined the term. In no other way could Congress have made certain that when this Court had this statute before it for construction, as it now has, the Court would find in it the *sine qua non* for a departure from "the laws of the several states" as "rules of decisions" in Federal Courts. In short, to paraphrase but not to disturb the sense of the proverb, this is a case where Congressional *inaction* "speaks louder than words"! Fraught with meaning, its "silence is golden"!

(5) Congress was not dealing with an evil curable by an application of some uniform definition of "real property". The *real cure* for the evil being dealt with is peculiarly an application dependent upon the laws of the several states, varied though they be. The statutory

language itself is indicative that such a cure was what Congress intended. It ordained that *"any real property of the corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed"*. The word *"any"* has a broadly inclusive significance that may not be overlooked. That it bears a relation to the word *"other"* that appears later in the clause is not to be doubted. The word *"same"* means: "not differing in kind; like in quality or qualities; indistinguishably alike": *Webster's New International Dictionary*. The word *"extent"* means: "space or amount to which a thing is extended; compass; [also, and much to the point here], the assessed value, *or the record made of the assessment*": *idem*. When the primary purpose of the entire clause as one in waiver of the ordinary immunity from *local* taxation is considered along with the use of the words "any", "same extent", and "other", it is manifest that Congress was permitting the taxation of any real property of appellant precisely as any real property of like nature held locally by others is taxed *locally*. Hence, it is only sensible to conclude that Congress intended *local law* to determine what particular property falls within the locally taxable category of real property. Such an intention is the only *natural* one in the circumstances.

(6) In an attempt to ascertain the intention of Congress as regards the use of the term "any real property" in the Act now before the Court, appellant refers to the language of prior statutes, such as the Act of June 3, 1864, 13 Stat. 111 (R. S. 5219; 12 U. S. C. §548, (3)) and the Federal Reserve Act of 1913 (38 Stat. 258; 12 U. S. C. §531) and some twelve other laws cited in

note 7 on p. 20 of its Brief. But appellant readily concedes that it has found no decisions in application of any of these prior statutes that throw any light on the intended meaning of "real property" or "real estate", as used in these laws, other than the few cases referred to on p. 19 of its Brief. Certainly, nothing in those cited cases has any bearing on the basic question involved here and now under argument, *i. e.*, the question as to whether Congress intended *local law* to govern in the application of this Act.

(7) This Act originated as H. R. 7360 of the 72nd Congress, 1st Session. The Committee report (H. Rept. No. 36 of the session) contains no comment whatsoever upon Section 10, the section of the Act here involved. The amending Act of 1941 originated as S. 1438 of the 77th Congress, 1st Session. It made no change in the language of the original Act pertaining to local taxation of real property. The Committee report (S. Rept. No. 292 of that session) commented on the existing law, *i. e.*, on the provisions of Section 10 of the original Act. The report contains the following relevant sentence:

> "The only qualification of these exemptions provides that real property of the Corporation is to be subject to nondiscriminatory State and local taxes".

After S. 1438 reached the House, its Committee reports (H. Rept. No. 616 and No. 616, Part 2) made substantially the same comment above quoted from the report of the Senate Committee. Neither the subsequent proceedings in both House and Senate relating to the "buildings" clause nor the conference report (all of which are recited in appellant's Brief at p. 23) dealt in

any way with the "real property" portion of the Act. The above quoted comment, therefore, discloses the intention of the Congress as to the point we are about to make.

Since a tax may discriminate either *against* or *in favor of*, it seems perfectly clear that the intention of Congress was to permit such local taxation of "any real property" of appellant corporation as is "nondiscriminatory" *in both of these senses.* That is to say, Congress intended that appellant's "real property" should be taxed without any discrimination either *against* or *in favor of* appellant. To relieve appellant from local taxation according to local law would be to discriminate *in its favor* and would not conform to the intention of Congress as thus stated in the reports of the Committees of both of its branches. It would obviously result in a local tax *preference* to appellant against all other local tax payers owning precisely similar "real property" and would thus *violate* the intention of Congress.

(8) We come now to the addition to Section 10 effected by the amending Act of 1941.

Notwithstanding its right and power to do so (*Pittman v. Home Owners' Loan Corp.*, 308 U. S. 21), it was *wholly unnecessary* for Congress to enact any exemption of appellant's *personal* property from local taxation. It was *already* exempt therefrom by implication from the Constitution. Was Congress thus *unnecessarily* acting with a superabundance of caution? Or did Congress have some *other* objective in mind? We think it had a special objective and that the nature of that objective appears quite clearly in the language used.

Omitting all but the relevant words in that portion of the amendment that deals with the exemption of "personal property" and supplying those that must be supplied to arrive at the true sense thereof, we read the language as follows:

> "Such exemptions [as are specified in the opening sentence of this Section] shall also be construed to be applicable to the * * * personal property owned [by appellant], but such exemptions shall not be construed to be applicable in any State to any buildings which are considered by the laws of such State to be personal property for [personal property] taxation purposes".

Thus, Congress was here dealing with a type of local taxation with which it had not previously dealt in the earlier portion of the Act by which it waived the normal immunity of appellant's *"real property"* from local taxation. It was here dealing with local *personal property* taxation. And what it was doing was *waiving* the normal *immunity* of appellant's "buildings" from local *personal property* taxation. It was thus accomplishing a *necessary* objective that it had in mind. But, it *was not* declaring "buildings" to be *personal* property in states where they are *real* property. Nor was it indicating that either *they* or *any other objects* that are part of *real* property for local real property taxation purposes are to be exempt from local taxation. And by the solicitous regard it demonstrated for *state laws* in its formulation of this amendment, Congress certainly *emphasized* its intention that *they, state laws*, are to govern the scope of the waiver of immunity of appellant's "real property" enacted earlier in the *very same Act*.

(9) Appellant quotes from *Austin v. The Aldermen*, 7 Wall. 694, 699, to the effect that a waiver of tax immunity of the United States "must be clear, and every well-grounded doubt upon the subject should be resolved in favor of the exemption" (p. 53 of appellant's Brief). But a mere glance at the cited case shows the quoted language to be mere *obiter dicta* of the opinion writer not necessary to the decision, because the facts of the case were concededly within the precise language of the Act of Congress there involved. On the other hand, when obliged by the facts before it to rule upon the point as a matter of law necessary to a decision of the case, this Court held in *Federal Housing Administration v. Burr*, 309 U. S. 242 (1940) that a waiver by Congress of a governmental immunity *in the case of corporations created as federal instrumentalities* should be *liberally* construed. And while the particular immunity *there* involved was the immunity from suit, the reasoning of the Court is equally applicable *here*. Said the Court (p. 249):

> "In our view, however, the bridge was crossed when Congress abrogated the immunity by this 'sue and be sued' clause. And no such grave interference with the federal function has been shown to lead us to imply that Congress did not intend the full consequence of what it said".

Here, the waiver is as to "any real property * * * to the same extent * * * as other real property is taxed". *Such words speak for themselves. Here*, likewise, the bridge has been crossed, and, no grave interference with the federal function having been shown, Congress must have intended "the full consequence of what it said".

(10) Appellant relies heavily upon the "assumption" spoken of in the *Jerome* case, *supra*, and quoted hereinbefore at p. 9. But, illogically enough, appellant utterly disregards the only true basis upon which any such "assumption" must rest, as pointed out above in our discussion of it. The cases cited by appellant on p. 51 of its Brief prove *our point*. They lend no support whatsoever to appellant's attempt to apply any such "assumption" to the Act here involved. *Lyeth v. Hoey, U. S. v. Pelzer, Morgan v. Commissioner*, and *Commissioner v. Tower* are all cases involving *federal revenue acts* "to be construed in the light of their general purpose to establish a nation-wide scheme of [federal] taxation uniform in application": *U. S. v. Pelzer*, 312 U. S. 399, 402-3. *National Labor Relations Board v. Hearst Publications* deals with the Wagner Act, in which Congress was engaged in solving a *"national* problem on a *national* scale" and not at all with such a *local problem* as it was engaged in solving by the Act *here*. In the Wagner Act, Congress created a *"national agency"* for administration of the Act *there*, a thing that it certainly did *not* do in the Act *here*.

The *Jerome* case involved an Act of Congress which provides punishment for one who enters a bank with intent to commit "any felony or larceny". The question *there* was whether the Act was broad enough to include a bank entry with an intent to commit what was a "felony" under State law but was not a "felony" under any federal statute. The conclusion reached was that the Act before the Court "is not deprived of vitality if it is interpreted to exclude state felonies and to include only those federal felonies which affect the banks protected by the Act". Such a conclusion was perfectly

logical in the circumstances. But it lends no support to any "assumption" that, in enacting the Act involved *in this appeal*, Congress was *not* making its application dependent on state law. Indeed, the very contrary is true as to *this Act*, for it *would be* deprived of vitality unless its application *is dependent* on state law.

(11) Apparently under the erroneous impression that we dispute the point, appellant argues that Federal courts have the power to construe Federal statutes in so far as the meaning of terms used in them are concerned. Of course, they have. And, of course, they have the power to disagree with any State court's interpretation of the meaning of a term used in a Federal statute. And, as exemplified in *Carpenter v. Shaw*, 280 U. S. 363 (cited by appellant), they have the power to correct a state court's characterization of an ineptly characterized tax whose real nature is to tax a subject matter that Congress has *forbidden* to be taxed. But, what has all this to do with ascertaining the intention of Congress as regards the application of the Act involved in *the case at bar*? And, in particular, what has it to do with the question as to whether Congress intended the application of *this Act* to depend upon local law as concerns the scope of the waiver of immunity here involved?

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(12) Appellant entirely misunderstands our purpose in citing such cases as *Waggoner Estate v. Wichita County*, *supra*, *Edward Hines, etc. v. Martin*, *supra*, and *Erie R. Co. v. Tompkins*, *supra*. They *are not* relied upon as authorities for any such proposition as an absurd contention that state property law is controlling regard-

less of its infringement upon a Federal right. But they *are relied* upon, as our argument above shows, to prove that, when Congress enacted the Act here involved, Congress *knew* the general rule that state property law governs in Federal courts, and that Congress *did nothing* in framing this Act to create a Federal right in appellant *requiring or providing otherwise,* which Congress could easily have done by defining the term "real property" had it intended that term to be given a uniform application throughout the nation.

(13) An argument that attempts to hide the *decisive question* in a case under a mass of chaff, albeit scholarly threshed chaff, cannot succeed. Appellant wastes laborious effort to prove error in the conclusion of the Court below that the prevailing view among the states does not support appellant's contention as to "a universally accepted meaning of 'real property' ". Likewise wasted is appellant's criticism of Pennsylvania law. It is also futile for appellant to argue *in this Court* such irrelevancies, under settled Pennsylvania law, as any inter-party contractual characterization of the nature of particular property and any contractually permissive removability of such property. We resist the temptation to argue in support of the conclusion of the Court below above mentioned. We content ourselves with an assertion that examination of the cases cited by that Court assuredly proves the rectitude of its conclusion. By its *"if not"* clause on p. 17 of its Brief, as particularly pointed out in Subsection (1) above, appellant concedes that the question of *first* importance is whether Congress intended state law to govern. We return now to that question as the *decisive* one in this case.

(14) Appellant leans upon a weak reed when it depends so heavily upon the express prohibition against the taxation of personal property added to the original Act by the amendment thereto. As we have hereinbefore pointed out, such an express prohibition was entirely *unnecessary*. The long settled immunity by implication from the Constitution itself took care of that. But, appellant feels that it must have *something* to support its position in the case. So it reaches out for a straw and contends for an immunity of "machinery" as personal property within this express prohibition of the amendment. If this case involved a Pennsylvania statute imposing a personal property tax on machinery, appellant would have some basis for its contention. But the Pennsylvania statute here involved, as quoted by appellant itself on p. 5 of its Brief, is a *real estate* tax statute, and the issue in this case is whether *that statute*, as construed and applied in Pennsylvania, is repugnant *not* to the Congressional prohibition against taxation of personal property *but* to the Congressional permission for taxation of "any real property".

(15) We are bound to take particular exception to appellant's preposterous suggestion (see p. 26 of its Brief) that to construe this Act of Congress so as to permit local taxation of appellant's manufacturing plants as all other local manufacturing plants are taxed would be to allow local industrial communities to profit at the expense of the nation. Who should know better than appellant the tremendous increase in necessary municipal expense required to protect and serve its plants and the influx of industrial workers and their families consequent upon the establishment and operation of its plants? What matters it that four-sevenths

of the money spent by Defense Plant Corporation was invested in machinery? Mere land with a building upon it does not constitute a manufacturing plant. It requires the machinery to make it such. It is the installation of the machinery and the operation of the resultant *plant* that causes the real increase in the required municipal servicing of the plant and its workers. Where are appellant's figures to prove profit to any local industrial community by the inclusion, in an assessment, of the machinery essential to the establishment and operation of a Defense Plant Corporation's plant located therein? Are not the people of such communities part of the people of the nation itself? And do not such people bear their share of the national expense,—including whatever taxes are imposed upon appellant throughout the nation? How, then, does the concept of a manufacturing plant as a single entity composed of land, building, and machinery essential to its operation enable either the local community where it is located or the people who inhabit the community to "take advantage" of a national emergency?

(16) Appellant concedes (p. 16 of its Brief) that *United States v. County of Allegheny*, 322 U. S. 174, "did not present the issue now before the Court". We take occasion, however, to quote an excerpt from the majority opinion *there* that is of *vital* importance *here*. At p. 190, the Court said:

> "The equities in this unfortunate conflict between the United States and one of its most important industrial communities are not capable of judicial ascertainment or equalization. Whether a county loses more than it gains by such federal activity, and

what other federal benefits ought to be considered if a balance were to be struck between advantages and disadvantages, we cannot say. The adjustment of benefits and burdens is for other departments, and studies to that end have been undertaken. We can only say that our constitutional system as judicially interpreted from the beginning leaves no room for the localities to impose either compensatory or retaliatory taxation on Government property interests. Their remedy lies in petition to the Federal Congress, which also is their Congress."

The relevancy of that language to this case is clear. *Here* we have the *response* of Congress to just such a petition by "the localities". *Here*, Congress itself resolved the conflict between the interests of Defense Plant Corporation (whose very name signifies its own industrial character) and those of local "industrial communities". Viewed in the light of the language of this Court, the *real* question *here* becomes *this*:

> Did Congress intend this plant of appellant to be taxed in the same manner as all other plants in the same industrial community are taxed?

We submit that this question must be answered in the affirmative. Had the United States been the owner of the entire manufactory involved in *United States v. County of Allegheny* and had such a statute been present in *that* case as is present in *this* case, who can doubt how this Court would have decided that case?

(17) In the opinion of the Court below (R. 86), reference is made to certain language of this Court germane to the question now under argument and which

will bear repetition. In *U. S. ex rel. T. V. A. v. Powelson*, 319 U. S., 266, 279, this Court said:

> "Though the meaning of 'property' as used in Section 25 of the Act [involved in that case] and in the Fifth Amendment is a federal question, it will normally obtain its content by reference to the local law."

The Act involved in that case was the "Tennessee Valley Authority Act of 1933", 48 Stat. 58. Section 25 of the Act is set forth in 16 U. S. C. §831x. If the content of the word "property", as *there* used, is normally to be obtained by reference to the local law, how much *more so* is the term "real property", as used in the Act *here* involved, when a comparison of the contexts and the purposes of the two Acts is made! This Court attributed no legislative intention for *uniformity* in definition to the general word "property" in the Act *there* before it. In deciding the case, it left the application of the Act to the law of the State where the property was located. Can the Court do otherwise in the legislative circumstances *here*?

Another case cited by the Court below (R. 80) is especially pertinent, — *U. S. v. Bechtold Company*, 129 F. 2d, 473 (C. C. A. 8, 1942). It well deserves the attention of this Court in its consideration of this appeal. The issue and its decision were as follows. The Historic Sites Act of August 21, 1935, 49 Stat. 666 (16 U. S. C. §§461-467), gave the Secretary of the Interior the power to "acquire in the name of the United States by gift, purchase, or otherwise, any property, personal or real". Acting under this Act, the United States proceeded to condemn certain property described in the petition as "*real estate*" located in St. Louis, Missouri. The Govern-

ment contended that it was liable to compensate the owner only for the land and the building thereon erected. The owner contended that the "real estate" being condemned was "a completely integrated plant, including land, building, equipment and machinery", and that, accordingly, the Government was liable under the Act for the value of the entire plant. The Court held in favor of the owner. It said (p. 477):

> "Whether or not these fixtures and machinery under the facts disclosed constituted a part of the realty was dependent upon the law of the State of Missouri, the *lex loci rei sitae*. This was a question of real estate which must always be determined by the law of the state in which the realty is located. Clark v. Clark, 178 U. S. 186; Restatement, Conflict of Laws, Sec. 208. This is true regardless of how the court may have acquired jursidiction or where the court may be located. The same principle is applicable in the determination of the question as to what law governs in the ascertainment of whether certain articles are or are not fixtures. The law of the state where the property is situate also controls in deciding whether annexation of a chattel to a freehold makes it a part of the realty. Triumph Electric Co. v. Patterson, 8 Cir., 211 F. 244; Manufacturers Bank & Trust Co. v. Lauchli, 8 Cir. 118 F. 2d 607; Bergh v. Safe Co., 2 Cir., 136 F. 368.
>
> We therefore look to the law of Missouri. It is well established by controlling decisions of Missouri that where machinery is placed in a building and the land, building and machinery are used together as a factory or plant, the machinery is a part of the realty."

Appellant attempts to treat these cases lightly by referring to them as "condemnation cases" (pp. 53-54 of its Brief). But a *ruling principle of law* loses none of its force by its application to a particular type of case. The fact that local law governs the application of federal condemnation acts is strong evidence that it governs the application of the Act in the case at bar, whose plain purpose is to permit *"local taxation"* of *"any real property"* of this appellant corporation.

(18) We conclude this argument on the merits of the *decisive question* in this case, therefore, by submitting that Congress intended appellant's real property to be subjected to local taxation *exactly* as other real property is taxed in the several States, and, *as a necessary corollary to that intention,* that Congress intended the words "any real property" to include and comprehend *whatever is real property for taxation* purposes in the particular State where it is located.

II.

This appeal fails to present a substantial Federal question.

(1) As we view this appeal, it presents but one Federal question, *i.e.,* whether Congress intended the application of the Act here involved to depend upon local law. There is complete unanimity of opinion upon the question by both of the courts below, and we contend it to be so entirely free from reasonable judicial doubt as to deprive it of reviewability under Rule 12, par. 1, of this Court. It is not a *substantial* question.

(2) The Act of Congress here involved has been the law since 1932, and the amendment bringing Defense Plant Corporation's real property within it has been in force since 1941. But the exhaustive Brief for appellant, which has apparently been in preparation since this Court noted probable jurisdiction on March 26, 1945, (R. 100), fails to cite a single case wherein any judicial doubt has ever been expressed as to the legislative intent that local law should govern. If any such case exists, appellant's extraordinarily extensive research surely would have uncovered it. We know of none.

(3) As to the clarity of the intention of Congress, we rely on the argument hereinbefore made upon the question. Resting upon that argument, we respectfully submit that this Court itself will find the question to be free from any doubt. If so, appellee's motion for dismissal, not yet adjudicated, will receive an appropriate disposition.

III.

Conclusion: This appeal should be dismissed or the appealed judgment should be affirmed.

(1) As shown by Paragraph Twenty of the agreement of lease from appellant to Curtiss-Wright Corporation (R. 19), the economic burden of the tax is imposed on the lessee. Thus, the situation *here* in that respect is just the reverse of that in *U. S. v. County of*

Allegheny, supra, where its ultimate burden was upon the Government.

(2) Said paragraph of the lease specifically covers all taxes "with respect to or upon the site, the buildings, or the machinery or any part thereof". The lease is dated March 5, 1941 (R. 11). The amendment to the Act of Congress granting permission for local taxation of appellant's "real property" was enacted on June 10, 1941. (R. 9). Thus, while the amendment was pending and undoubtedly in anticipation of its enactment, appellant evidenced its expectation that its "real property" would be made subject to local taxation and that such taxation would include its machinery as part of its plant, pursuant to Pennsylvania law. Now, when its plant is so assessed, appellant inconsistently objects, even though it does not have to pay the resultant tax.

(3) The act of the assessor in fixing the value of the machinery is not to be construed as constituting a separate assessment of it. Under settled Pennsylvania law, this is mere clerical procedure for the information of the land owner. "While the property might have been valued in one item, the integrity of the assessment was not affected by the fact that the assessor enumerated the elements entering into the aggregate of the valuation on each": *Guthrie v. Pittsburgh Dry Goods Co.,* 47 Pa. Superior Court 384, 400. Thus, the form of the assessment of appellant's plant here involved (R. 83, note 1) has no material significance.

(4) In conclusion, appellee respectfully submits that, if this appeal is not dismissed for want of sub-

stantiality in the Federal question it presents, the appeal is without merit and the judgment below should be affirmed.

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